

In re TURNER ET AL., Application No. 09/520,684
Amendment B

REMARKS

In response to the FINAL Office action mailed September 9, 2003, please consider the amendments and remarks presented herein. Reconsideration and/or further prosecution of the application is respectfully requested. No new matter is added herein.

After entering this amendment, claims 24, 25, 28, 29, 30, and 33 remain pending, with claims 1-23, 26-27, and 31-32 canceled without prejudice, either previously or herein.

In regards to the claim amendments of the remaining pending claims:

- Applicants amend independent claim 24 to include the limitations of dependent claims 26 and 27, and thus is previously pending dependent claim 27 re-written in independent form. Claim 25 remains depending from claim 24. Also, claim 24 is amended to change the second occurrence of "a switching element" to "the switching element".
- Independent claim 28 is amended to correct typographical errors to change the first occurrence of "the cell time" to "a cell time", and to change the second occurrence of "a switching element" to "the switching element"..
- Applicants amended independent claim 29 to include the limitations of dependent claims 31 and 32, and thus is previously pending dependent claim 32 re-written in independent form. Claim 30 remains depending from claim 29. Also, claim 29 is amended to change the second occurrence of "a switching element" to "the switching element".
- Independent claim 33 is amended to correct a typographical error to change the first occurrence of "the cell time" to "a cell time", the first occurrence of "the particular packet" to "a particular packet", and to change the second occurrence of "a switching element" to "the switching element"..

Even though the Office action is marked final, applicants believe this amendment should be entered as it cancels claims, corrects typographical errors to remove all § 112 issues, and

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re-writes two dependent claims in independent form, and thus puts the case in condition for allowance or appeal.

The following remarks are numbered to reference the same numbered paragraphs of the Office Action to which they are directed.

Paragraph 3. Claims 28, 31 and 33 are rejected under 35 USC § 112, second paragraph for being indefinite. Applicants have corrected the typographical errors to change the first occurrence of "the cell time" to "a cell time" in claims 28, 29 (prior claims 29+31+32), and in claim 33, and to change the first occurrence of "the particular packet" to "a particular packet" in claim 33. For these reasons and the other amendments to the claims, applicants believe all pending claims comply with 35 USC § 112, and request all § 112 be withdrawn.

Paragraph 9. Pending claims 24 (previous claim 24+26+27), 25, 28, 29 (previous claim 29+31+32), 30, and 33 all stand rejected under 35 USC § 102(b) as being anticipated by Fan, US Patent 5,337,308. The rejections pertaining to the claims canceled herein will not addressed as they are moot.

Applicants respectfully traverse the rejections of these claims as the Office action (a) fails to present a prima facie case of anticipation, and (b) Fan nor the other prior art of record, alone or in combination, neither teaches nor suggests all the claim limitations.

The Office action from the bottom of page 5 through page 6 addresses the elements/limitations of the pending claims. As the Office action combines the rejections of these claims, applicants will correspondingly combine their remarks, with specific reference to pending claim 24, with these remarks applying to the other claims, including the pending means plus function claims.

The Office action apparently relies on for the rejections of these claims a first stage switching element of the second embodiment (as it cites Fan, col. 7, line 66 to col. 8, line 6) apparently combined with a second first stage switching element of the first embodiment (as it cites detector 34). However, these two embodiments operate independently and differently, and thus are not a proper rejection of each pending claim.

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Moreover, the Office action apparently forgets to read all claim element/limitations together. Claim 24 recites "identifying one or more floor indications *received by* a switching element, each of said one or more floor indications associated with a respective timestamp value; ... finding an earliest timestamp value associated with *said one or more floor* indications and said one or more data packets...". The Office action relies on comparator (45) in the context of FIG. 6 (the first stage switching element of the second embodiment) for the rejection of these limitations; however, RT cells are not *received* by the switching module cited in the Office action, rather they are generated by RT cell generator 48. For at least this reason, the Office action fails to present a prima facie case of anticipation.

Moreover, all pending independent claims recite a limitation (or means for such) of "forwarding the particular data packet during the current cell time; wherein said forwarding the particular data packet during the current cell time includes removing the particular data packet from *an arrival buffer* and if said removing causes the arrival buffer to become empty, *in response* adding a new floor indication *to the arrival buffer*" (*emphasis added*). The Office action fails to address the entire limitation, which must be read in conjunction with all claim elements/limitation. The Office action rejects these limitations arguing that:

"The first stage includes an empty buffer detector (22) that detects empty output buffers of the first stage and informs RT cell generator of a 'no cell condition' and supplies an RT cell, i.e., status message, to the output link (col. 5, lines 47-55). This cell is transmitted to the input buffers of the second stage, thus meeting the limitation of creating a new flow indication at the arrival buffers."

a first stage can generate an RT cell."

However, claim 24 (and each of the other pending independent claims) recite that a new floor indication is added *to the arrival buffer* from which the particular data packet is removed *in response* to this removing causing the arrival buffer to become empty.

The Office action fails to address the "in response" limitation, and the Office action relies on arrival buffer in different switching modules, wherein the claim recites adding the new

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floor indication to the arrival buffer from which the packet was removed. Thus, the Office action fails to provide a proper anticipation rejection in accordance with the MPEP.

Moreover, applicants submit that Fan nor the other prior art of record, alone or in combination, neither teaches nor suggests all the recited claim elements/limitations of any of the pending independent claims, especially as each claim recites the improvement of adding the new floor to the arrival buffer from which the particular data packet is removed in response to this removing causing the arrival buffer to become empty.

Dependent claims 25 and 30 are believed to be allowable for at least the reasons presented herein for allowance of their respective independent claims.

Paragraphs 10-14. The rejections recited in these paragraphs are moot, as the claims to which these paragraphs are directed have been canceled herein.

Final Remarks. In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over the prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney.

A one-month extension of time under 37 C.F.R. § 1.136 is requested. To the extent that a petition for a different or additional extension of time is deemed necessary, a petition for a sufficient extension of time to render the present submission timely is requested. Please charge Deposit Account No. 501430 the appropriate petition fee.

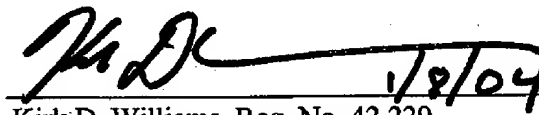
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Moreover, the Commissioner is hereby generally authorized under 37 C.F.R. § 1.136(a)(3) to treat this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 requiring an extension of time as incorporating a request therefore, and the Commissioner is hereby specifically authorized to charge Deposit Account No. 501430 for any fee that may be due in connection with such a request for an extension of time. Moreover, the Commissioner is hereby authorized to charge payment of any fee due any under 37 C.F.R. §§ 1.16 and § 1.17 associated with this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 or credit any overpayment to Deposit Account No. 501430.

Respectfully submitted,
The Law Office of Kirk D. Williams

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By


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